

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

JUAN CARLOS DELAROSA,)	
Institutional ID No. 1279704,)	
SID No. 6771382,)	
Previous TDCJ No. 1169932,)	
)	
Plaintiff,)	
)	
V.)	CIVIL ACTION NO.
)	1:08-CV-063-C
THE STATE OF TEXAS, <i>et al</i> ,)	ECF
)	
Defendants.)	

ORDER

Plaintiff Juan Carlos Delarosa, proceeding *pro se* and *in forma pauperis*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against Defendants Officers NFN Aguirre, NFN Cantu, NFN Hernandez, NFN Burrola, NFN Garcia and NFN Bishop, about the conditions of his confinement in the John Wallace Unit of the Texas Department of Criminal Justice, Institutional Division (“TDCJ-ID”). Plaintiff alleges that Defendants subjected him to cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution by exhibiting deliberate indifference to his serious medical needs and to his health and safety by violating his medical restrictions and delaying his medical care. Plaintiff also alleges that the Defendants filed false disciplinary cases against him and made a statement that Plaintiff waved at a member of a notorious prison gang in retaliation for Plaintiff’s exercising his rights under the First Amendment.

The complaint was transferred to the docket of the United States Magistrate Judge, who held a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179, 181-82 (5th Cir. 1985), on August 26, 2008. Plaintiff did not consent to proceed before the United States Magistrate Judge. Pursuant to this Court’s Order entered on June 23, 2008, the Magistrate Judge entered findings of

fact, conclusions of law, and recommendation for disposition on February 17, 2009. On March 13, 2009, the Court granted Plaintiff's Motion for Enlargement of Time to file his response to the Magistrate Judge's Report and Recommendation, and on April 13, 2009, Plaintiff filed objections which were signed and dated April 8, 2009.

This Court has made an independent review of the record in this case and finds that Plaintiff's objections should be overruled and the Magistrate Judge's findings, conclusions and recommendation should be accepted and adopted.

It is therefore ORDERED:

(1) Plaintiff's claims against Defendants Hernandez and Cantu that he was subjected to cruel and unusual punishment in the form of deliberate indifference to his serious medical needs or his health and safety are **dismissed with prejudice as frivolous**.

(2) Plaintiff's claim against all Defendants, except Aguirre, that he was subjected to cruel and unusual punishment in the form of a strip search are **dismissed with prejudice as frivolous**.

(3) Plaintiff's claims against Defendants Bishop, Burrola, and Garcia that he was subjected to cruel and unusual punishment in the form of deliberate indifference to his serious medical needs and delay in medical treatment are **dismissed with prejudice as frivolous**.

(4) Plaintiff's claim against Defendant Burrola that Plaintiff was subjected to retaliation for the grievance that he wrote about Burrola is **dismissed with prejudice as frivolous**.

(5) Plaintiff's claims against the State of Texas and against the other named Defendants in their official capacities are **dismissed with prejudice as frivolous**.

(6) Within thirty (30) days from the date the Law Enforcement Defense Division of the Texas Attorney General's Office receives this Order, Defendant Officer Aguirre shall file a written

answer or response to Plaintiff's claims that he was subjected to cruel and unusual punishment in the form of deliberate indifference to his serious medical needs or health and safety on December 25, 2007, when he underwent a strip search without the use of a chair.

(7) Within thirty (30) days from the date the Law Enforcement Defense Division of the Texas Attorney General's Office receives this Order, Defendant Officer Cantu shall file a written answer or response to Plaintiff's claims that Cantu retaliated against him for the December 30, 2007 grievance about her by filing the January 12, 2008 disciplinary case against him for being out of place and for failure to obey a direct order.

(8) Defendants State of Texas and Officers Hernandez, Burrola, Garcia, and Bishop are dismissed from this case.


(9) The caption of this case shall be changed to reflect that Defendants Aguirre and Cantu are the only remaining defendants.

(10) The Clerk shall mail a copy of Plaintiff's civil rights complaint, along with a copy of this Order, to Docketing, Law Enforcement Defense Division, Office of the Attorney General, P.O. Box 12548, Capitol Station, Austin, Texas 78711 by certified mail, return receipt requested.

(11) Any pending motions are denied.

Judgment shall be entered accordingly.

Dated September 8, 2009.


SAM R. CUMMINGS
UNITED STATES DISTRICT COURT